
IOWA UTILITIES BOARD
Safety & Engineering Section

TO: The Board

FROM: Don Stursma

DATE: October 24, 2002

SUBJECT: Proposed Amendments to Electric Franchise and Related Rules in 199 IAC Chapters 11 and 25.

I. Background/Analysis

On February 23, 2000, the Board issued an "Order Regarding Plan for Regulatory Review" responding to Governor Vilsack's Executive Orders 8 and 9. The executive orders called for review of all state rules, using the criteria of Need, Clarity, Intent and Statutory Authority, Cost, and Fairness. The rules review project was docketed as Docket No. INU-00-1. As part of that project, a report entitled "Team 5 Final Report of Rules Review - 199 IAC Chapters 9, 10, 11, 12, 13, and 25" was issued on August 30, 2001. The report recommended a total of 42 amendments to these rule chapters.

A significant number of the amendments proposed in the INU attempted to simplify the process for extension of electric franchise. Electric line franchises issued by the Utilities Board pursuant to Iowa Code chapter 478 are valid for not more than 25 years (§ 478.9). For an electric line to remain in service after the expiration date of the franchise, the Board must grant an "extension of franchise" (§ 478.13). Utilities have long complained that the Board's procedures for extension (a.k.a. renewal) of electric franchise are needlessly complex and cumbersome. However, simplification efforts were constrained by § 478.13, which requires that extension proceedings "shall be conducted in the same manner as an original application." This provision was seen as limiting the extent to which the filing requirements and process for an extension could depart from that for a new line franchise, even where the relevance of certain requirements to an existing versus a new line seemed questionable.

The 2002 Legislature subsequently passed H.F. 2341, which amended § 478.13 to now state in pertinent part:

The board shall adopt rules governing extension applications and proceedings with the intent that the extension applications and proceedings are less extensive than original applications and proceedings.

Staff has drafted rules to implement H.F. 2341 and other changes to electric line rules proposed in Docket No. INU-00-1. Due to the passage of H.F. 2341, a number of rules proposed in the INU have been substantially revised.

The electric franchise rules are found in 199 IAC Chapter 11; however, the INU docket proposed that certain of these rules be moved to Chapter 25, the Iowa Electrical Safety Code. Therefore amendments to Chapter 25 proposed in Docket No. INU-00-1 are also included in these proposed rules. It is noted that utilities had the opportunity to comment on the INU draft rules during the INU process.

Rescind and replace Rule 11.1

In Docket No. INU-00-1 staff proposed a number of changes to this rule. Some were simple clarifications; others, such as the statement on when a franchise is required, were to correct inconsistencies with the law. A provision for “Special situations” was inconsistent with the Board’s rule on waivers in Rule 1.1(3). A revised provision for filing would allow service by means other than U.S. mail or personal service (ie: Federal Express or other courier services). In addition, a commenter in the INU observed that this chapter did not include statements of authority and purpose consistent with most other chapters of Board rules.

Staff also proposed a new provision to alert petitioners to the routing provisions contained in Iowa Code § 478.18; this section has been a major factor in a number of Board decisions and court challenges, and comments filed in the INU were supportive of this addition. The proposed rule includes the provision of H.F. 2341 which adds roads to the list of routes favored in the law. Rather than quote or paraphrase the law, the language proposed was selected to reflect how this law has been interpreted in past court and Board decisions.¹

Staff proposes that Rule 11.1 be rescinded and replaced as shown below:

ITEM 1. Rescind rule199—11.1 and adopt the following **new** rule rule199—11.1:

199—11.1(478) General information.

11.1(1) Authority. The standards pertaining to electric transmission lines in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code sections 478.19 and 478.20. This chapter shall apply to any individual, company, corporation, or city engaged in the construction, operation and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478.

11.1(2) Purpose. The purpose of this chapter is to establish standards for electric franchise proceedings before the Iowa utilities board.

11.1(3) Iowa electrical safety code. Overhead and underground electric supply line minimum requirements to be applied in installation, operation and maintenance, are found in 199—Chapter 25, Iowa electrical safety code.

11.1(4) Date of filing. A petition for franchise shall be considered as filed with the board on the date of the United States Postal Service postmark if the filing is made by mail, or on the date received at the board’s Records Center if the filing is made in person or sent other than by United States mail.

¹ Hanson v. Iowa State Commerce Commission, 227 N.W.2d 157, 163 (Iowa 1975); Anstey v. Iowa State Commerce Commission, 292 N.W.2d 380, 388 (Iowa 1980); IES Utilities Inc., "Order Affirming Proposed Decision and Order," Docket No. E-21324, (Issued March 1, 2000).

11.1(5) Franchise - when required. An electric franchise shall be required for the construction, operation, and maintenance of any electric line which is capable of operating at 69,000 volts or more outside of cities, except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.

11.1(6) Definitions. For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meaning indicated below:

a. *“Board”* means the utilities board within the utilities division of the department of commerce.

b. *“Capable of operating”* shall mean the standard voltage rating at which the line, wire or cable can be operated consistent with the level of the insulators and the conductors used in construction of the line, wire or cable, based on manufacturer’s specifications, industry practice, and applicable industry standards.

11.1(7) Route Selection. The planning for a route that is the subject of a petition for franchise must begin with roads, railroad right of way, and/or division lines of land consistent with the provisions of Iowa Code section 478.18. When a route near and parallel to these features has points where electric line construction is not practical and reasonable, deviations may be proposed at those points, when accompanied by a proper evidentiary showing, generally of engineering reasons, that the initial route or routes examined did not meet the practicable and reasonable standard. Although deviations based on landowner preference or minimizing interference with land use may be permissible, the petitioner must be able to demonstrate that route planning began with a route or routes near and parallel to roads, railroad right of way or division lines of land.

This subrule is intended to implement Iowa Code section 478.18.

BOARD COMMENTS:

Amend Rule 11.2

The current rules contain virtually identical filing requirements for all franchise actions, although some exhibits irrelevant to extensions are not requested on the petition form. Staff proposes separate rules for petitions for franchise and amendment of franchise - Rule 11.2, and for extension of franchises – new Rule 11.2A. This requires amending the opening paragraph of this rule. In Docket No. INU-00-1 staff had proposed a clarification to paragraph 11.2(3)”f” stating that filed Exhibit B maps must show if electric lines are overhead or buried. This has been long-standing actual practice, and no commenters in the docket objected. (A separate INU proposal that the maps show unincorporated areas was opposed by commenters; staff found merit in the objections and is not pursuing such a rule change.) A sentence that will be unnecessary in the proposed new rules needs to be removed from paragraph 11.2(3)”e”. In addition, there is a grammatical error in Rule 11.2(7) that should be corrected.

It occasionally happens that a new franchise must be sought for an existing electric line in cases where the franchise was inadvertently allowed to expire or where no franchise record can be found. In such cases the historical information requested in renewal of franchise proceedings would also be relevant and should be included in the petition. Exhibit D would be the appropriate location for such information.

Staff therefore proposes the following revisions:

ITEM 2: Amend the opening paragraph of Rule 11.2 to read:

199—11.2(478) Form of petition for franchise, ~~extension~~, or amendment of franchise. Petition for a new or amendment franchise action by the board shall be made in the following manner. Exhibits in addition to those required by this rule may be attached when appropriate.

ITEM 3: Amend paragraph 199—11.2(3)"e" as follows:

e. The name and boundaries of any public lands or parks, recreational areas, preserves or wildlife refuges. ~~This information need only be provided with petitions proposing construction of a new electric line or relocation of an existing electric line.~~

ITEM 4: Amend paragraph 199—11.2(3)"f" as follows:

f. All electric supply lines, including petitioner's, within six-tenths of a mile of the route, including the nominal voltage, whether overhead or buried, and the name and address of owners. Any line to be removed or relocated shall be designated.

ITEM 5: Amend subrule 199—11.2(5) by adding a new paragraph "e".

e. If a new franchise must be sought for an existing electric line, historical information as specified in 199 IAC 11.2A(5)"a"-~~"d"~~.

ITEM 6: Amend subrule 199—11.2(7) as follows:

11.2(7) Exhibit F. The showing of notice to potentially affected parties as required by 199 IAC 11.5(4).

BOARD COMMENTS:

Adopt New Rule 11.2A

This rule would contain the filing requirements for a petition for extension of franchise. It requests only such information as staff believes is relevant to an extension action. The filing would include the following elements:

Petition - obviously a petition is needed. Under the rules as proposed a new petition form would be required. For example, it is proposed that certain information on prior franchises be included in Exhibit D instead of as a separate attachment as on the current petition form.

Exhibit A - a legal description of the route, including termini in other counties, would still be required. This is not only a record of line location but is part of the published notice.

Exhibit B - a map of the route would still be required but its content would be less than for a new or amended franchise. The map would continue to show the route in relation to the government land survey and area landmarks, but information on other utilities, airports, etc. is considered of little relevance to an existing electric line and so would not be required. Only other electric lines would need to be shown. The current requirement for showing the names and addresses of area facility owners was not retained - see later discussion on mailed notices.

Exhibit C - an exhibit of engineering and technical information would be required. This information is needed to verify code compliance and describe the nature of the facilities for which franchise is sought. The same exhibit is proposed for use for both new and existing construction. This exhibit was recently modified to make it simpler and more relevant and staff believes it remains appropriate for extensions.

Exhibit D - This exhibit currently requests a number of issues stated in Iowa Code § 478.3(2) be addressed, few of which are relevant to an existing line. This is an area where H.F. 2341 eliminates a requirement to file information of questionable value. The proposed rule would request only information on the franchise history of the line or lines involved, information on any other significant changes since franchising, and evidence that the line(s) remain necessary to serve a public use and represent a reasonable relationship of transmitting electricity in the public interest. Under Iowa Code § 478.4 the Board must make an affirmative finding on this latter issue to grant a franchise, and it appears appropriate that this same test be applied to extending a franchise.

The proposed rules omit a substantive requirement of the current rules - the mailed notice to area utilities, railroads, airports, and the IDOT. The purpose of current Exhibit F (Subrule 11.2(7)) is to establish that certain parties owning facilities that may be affected by an electric transmission line project have received a notice letter in accordance with Board subrule 11.5(4). That rule's intent is to notify possibly affected parties who may not have representatives in the electric line area, and thus may not be aware of a locally published notice that a petition for franchise action has been filed with the Board. These rules are currently applicable to any franchise petition.

Board staff recalls only one instance where a mailed notice letter led to a filing with the Board (from a pipeline company concerned about how close the electric line poles would be to its pipeline) and it was for a proposed new line, not a

franchise extension. (Staff does get occasional calls asking why someone got the notice letter.) The Board's rules for pipeline permits in 199 IAC Chapters 10 and 13 contain no parallel requirement, and staff does not recall any instance where a utility, railroad, or highway complained of lack of notice in such cases. It is therefore proposed that mailed notice to other parties not be required for franchise extensions. This action would be consistent with H.F. 2341 and frequent calls by utilities to simplify the franchise extension process.

Staff therefore proposes adoption of the following new rule:

ITEM 7: Adopt new rule 11.2A:

199—11.2A(478) Form of petition for extension of franchise. Petition for an extension of franchise action by the board shall be made in the following manner. Exhibits in addition to those required by this rule may be attached when appropriate.

11.2A(1) Petition. Petition shall be made on forms prescribed by the board, shall be notarized, and shall have attached all required exhibits.

11.2A(2) Exhibit A—a legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public, private, or railroad right-of-way. The description shall identify any termini located in other counties.

11.2A(3) Exhibit B—a map showing the route of the line drawn with reasonable accuracy considering the scale. Two copies shall be submitted. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

a. The route of the electric line which is the subject of the petition, including starting and end points, and, when paralleling a road or railroad, which side it is on. Line sections with double circuit construction or underbuild shall be designated.

b. The name of the county, county and section lines, section numbers, and the township and range numbers.

c. The location and identity of roads, railroads, major streams and bodies of water, and any other significant natural or man-made features or landmarks.

d. The name and corporate limits of cities.

e. All electric supply lines, including petitioner's, within six-tenths of a mile of the route, including the nominal voltage, whether overhead or buried, and the names of the owners.

11.2A(4) Exhibit C. Technical information and engineering specifications describing typical materials, equipment and assembly methods as specified on forms provided by the board.

11.2A(5) Exhibit D. The exhibit shall consist of a written text containing the following:

a. A listing of all existing franchises for which extension in whole or in part is sought, including the docket number, franchise number, date of issue, county of location, and to whom granted.

b. A listing of all amendments to the franchises listed in "a", including the docket number, amendment number, date of issue, and the purpose of the amendment.

c. A description of any substantial rebuilds, reconstructions, alterations, relocations, or changes in operation not included in a prior franchise or amendment action.

d. A description of any changes in ownership or operating and maintenance responsibility.

e. An allegation, with supporting testimony, that the line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

f. Any other information or explanations in support of the petition.

BOARD COMMENTS:

Amend Rule 199—11.3(2)"a"

Iowa Code § 478.1 exempts electric lines located entirely within the boundaries of property owned by an electric company or an end user from franchise requirements. However, this exception is not included in the Board rule on when a franchise filing is required. Staff therefore recommends the following change to make the rule consistent with the law.

ITEM 8. Amend paragraph 199—11.3(2)"a" as follows:

a. A petition for franchise shall be filed with the board for the construction of any electric line outside of the city which is capable of operating at a nominal voltage of 69 kilovolts or more, except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.

BOARD COMMENTS:

AMEND RULE 11.5(2)"a"

Iowa Code 479.4 states "A franchise shall not become effective until the applicant shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding . . . including costs of . . . publication of notice . . ." Rule 11.5(2) states "Proof of publication and proof of payment of publication costs shall be filed with the Board." Franchises are not issued until both proofs are received. However, all forms of petition for electric franchise state:

Petitioner agrees to pay all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable to the proceeding.

By this statement the petitioner has filed an agreement to pay publication (and all other) costs, an option allowed by the law. Requiring that they sign an agreement to pay and file proof of payment appears duplicative. Rule 63 of the Rules of Civil Procedure does not require that proof of payment accompany proof of publication.

By including the above promise to pay in the petition forms, it appears the filing of actual proof of payment becomes unnecessary. Staff is aware that the time required for the petitioner to obtain and file proof of payment can significantly delay the issuance of a franchise. It therefore appears that requiring the filing of proof of payment is an unnecessary burden on participants, and eliminating this requirement would be consistent with efforts to expedite the franchise process.

Staff therefore recommends the rule be amended as follows:

ITEM 9. Amend paragraph 199—11.5(2)"a" as follows:

a. Whenever a petition for a franchise, extension of franchise, or amendment of franchise is filed with the board, the board shall prepare a notice addressed to the citizens of each county through which the line or lines extend. The petitioner shall cause this notice to be published in a newspaper located in each county for two consecutive weeks. Proof of publication ~~and proof of payment of publication costs~~ shall be filed with the board. This published notice shall constitute sufficient notice to all parties of the proceeding, except owners of record and parties in possession of land to be crossed for which voluntary easements have not been obtained at the time of the first publication of the notice.

BOARD COMMENTS:

AMEND RULE 199—11.5(4)

Amendment of this rule is proposed for three purposes. First, the requirement for mailed notice of petition filing must be made consistent with proposed Rule 11.2A, which would not require such notice to other parties in franchise extension proceedings. Second, the rule requires a map be included with the notice, but does not state that a copy of that map must be included with the copies of the notices filed with the Board. The map is part of the notice and needs to be filed, but in staff's experience this has not always been understood by petitioners. Third the rule does not correctly cross-reference to the applicable subparagraphs of Rule 11.2(3).

Staff recommends the following language to address all three concerns:

ITEM 10. Amend subrule 199—11.5(4) as follows:

11.5(4) *Notice to other parties.* Petitioners for a franchise, ~~extension of franchise~~, or amendment to franchise shall give written notice by ordinary mail, mailed at the time the petition is filed with the board, accompanied by a map showing the route of the proposed electric supply line, to the affected parties described in 11.2(3)“~~e f~~” through “~~j k~~” and the Iowa department of transportation. One copy of each letter of notification or one copy of the letter accompanied by a written statement listing all parties to which it was mailed, ~~and the date of mailing and a copy of the map sent with the letters~~ shall accompany the petition when it is filed with the board.

BOARD COMMENTS:

AMEND RULE 199—11.5(5) BY ADDING A NEW PARAGRAPH “c”

Add an advisory warning that under Iowa Code § 478.21 an electric franchise is forfeit if construction has not been commenced within two years of the date of the franchise, and that a two year extension can be requested from the Board. Similar advisories regarding pipeline permits are contained in 199 IAC 10.7 and 13.7. This change is desirable for informational purposes and to be consistent with other rule chapters. The language proposed reflects recent amendment of Iowa Code § 478.21 by H.F. 2341.

Staff therefore recommends a new subrule as follows:

ITEM 11. Amend subrule 199—11.5(5) by adding a **new** paragraph "c" as follows:

c. If the facilities authorized by a franchise are not constructed in whole or in part within two years of the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeit unless the franchise holder petition the board for an extension of time pursuant to Iowa Code section 478.21.

BOARD COMMENTS:

DELETE RULE 199—11.5(6)

This rule requires notice letters to possibly affected other parties if electric line construction commences more than one year after the franchise was issued. The value of this rule is questioned. Any needed design accommodations should have been made following the initial notice required under subrule 11.5(4). If precautions were needed during construction, the other utilities would receive a notice of proposed excavation under Iowa Code chapter 480. Utility commenters in Docket No. INU-00-1 supported deletion, contending the rule is unnecessary.

If the Board should decide to retain this rule, the code reference should be corrected to refer to paragraphs 11.2(3)"f" through "k", not "e" through "j."

For the Board's information, the rule proposed for deletion states:

11.5(6) *Notice of deferred construction.* If construction of a proposed electric supply line is not commenced within one year from the date of granting the franchise, or construction of a proposed improvement is not commenced on an existing electric supply line within one year from the date of granting the amendment of franchise for the improvement, the party holding the franchise shall renotify in writing by ordinary mail all affected parties, as described in 11.2(3)"e" through "j," not more than 60 days and not less than 7 days before commencing construction. For purposes of 11.5(6), "commencing construction" means any activity along the subject line route other than surveying.

ITEM 12. Rescind and reserve Rule 199 IAC 11.5(6).

BOARD COMMENTS:

AMEND RULE 199—11.6(1)

In 2002 the Legislature, in S.F. 2086, raised the threshold for electric franchises from 34,500 to 69,000 volts. In Docket No. RMU-02-5, the Board subsequently amended rule Chapter 199-11 to reflect this change. However, rule 11.6(1) was apparently overlooked – its threshold should also be 69 kV.

The rule requires joint use construction when multiple electric lines are to be located in the same road right-of-way, unless the Board authorizes otherwise. In Docket No. RMU-00-1, a number of commenters supported elimination of this rule. It is acknowledged that the subrule does not preclude separate pole lines on both sides of a road, since one line need only be placed on private property to avoid the rule. Nor is it disputed that electrical interference with communications signals is apparently no longer an issue. However, the staff feels that minimizing interference with other uses of the road right-of-way, especially as a corridor for

all types of utilities, remains a consideration. For that reason it does not propose the rule be rescinded. (As a historical note, Board policy encouraging common use construction, not limited to road right-of-way, was first adopted on January 13, 1930, in Docket No. E-1309.)

While Chapter 11 primarily addresses electric franchise proceedings, it also contains provisions of general application to all electric lines and outside of franchise proceedings. Iowa Code § 478.1 limits the Board's franchise authority to electric transmission lines outside of cities, leaving matters inside of cities to local control. In its present form, however, rule 11.6(1) applies to urban lines. Staff believes that separate pole lines is a routing issue, and the law intended for routing decisions inside of cities to be made at the local level. With the proposed change the rule would apply only to lines outside of cities and which require an electric franchise, which staff believes is appropriate.

Staff therefore proposes the following changes to the rule:

ITEM 13. Amend subrule 199—11.6(1) as follows:

11.6(1) *Common use construction.* Whenever an overhead electric line capable of operating at ~~34.5~~ 69 kilovolts or more is built or rebuilt on public road right-of-way located outside of cities, all parallel overhead electric supply circuits on the same road right-of-way shall be attached to the same or common line of structures unless the board authorizes, for good cause shown, the construction of separate pole lines.

BOARD COMMENTS:

ADD NEW RULE 199-11.8

For pipeline permit proceedings, Rules 10.10(1) and 13.10 specify that the petitioner will pay the costs incurred by the Board for processing a petition for pipeline permit (Iowa Code 479.13, 479B.10). The petitioner must also pay the Board's costs in electric franchise proceedings (Iowa Code 478.4). This is stated on the electric franchise petition forms, but there is no rule provision requiring payment of costs in Chapter 11. For consistency and to advise persons who may not be familiar with Board proceedings, it appears appropriate to adopt a rule in 199 IAC Chapter 11 informing petitioners that they must pay the costs incurred by the Board for processing a petition for electric franchise. The language proposed is comparable to that of the cited pipeline permit rules.

Staff proposes the following rule be adopted:

ITEM 14. Add new rule 199—11.8.

199—11.8(478) Fees and expenses. The petitioner shall pay the actual unrecovered cost incurred by the board attributable to the processing, investigation, and inspection related to a petition requesting an electric franchise.

BOARD COMMENTS:

AMEND RULE 199—25.1

A commenter in Docket No. INU-00-01 noted that Chapter 25 did not have a statement of authority and purpose consistent with most other chapters of Board rules. Staff finds merit in that comment. Staff believes the “Purpose and intent” expressed in the existing rule remains valid but a statement of authority should be added.

Staff therefore recommends the existing rule be replaced with the following:

ITEM 15. Rescind rule 199—25.1 and adopt the following **new** rule 199—25.1:

199—25.1(476, 476A, 478) General information.

25.1(1) Authority. The standards relating to electric and communication facilities in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code sections 476.1, 476.2, 476A.12, 478.19 and 478.20.

25.1(2) Purpose. The purpose of this chapter is to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. The rules apply to electric and communication utility facilities located in the state of Iowa and shall supersede all conflicting rules of any such utility. This rule shall in no way relieve any utility from any of its duties under the laws of this state.

BOARD COMMENTS:

AMEND RULE 199 IAC 25.2(2) and (3)

In Docket No. RMU-02-1, "Order Adopting Amendments" issued March 18, 2002, the Board adopted the 2002 edition of the National Electrical Safety Code (NESC) in subrule 25.2(1). However, other references to the NESC in Rule 25.2(2) and (3) were not changed at that time. The 2002 NESC also renumbered and/or amended certain provisions that are referenced in this rule. Revisions are proposed to make the Board's rules consistent with the currently adopted version of the NESC.

Subrule 25.2(2)"b"(4) recognizes that the clearance tables in the 1987 NESC are more suitable for field use than those of subsequent editions. The clearance of an electric line is governed by the code in effect at the time it was constructed. The subrule should reflect that the Board has made this recognition for all NESC editions subsequent to 1987.

In Docket No. INU-00-1, the Iowa Association of Electric Cooperatives (IAEC) noted that 199 IAC 25.2(2)"e" creates a requirement that pad-mounted equipment not located within a fenced or otherwise protected area shall have affixed to its outside access door or cover a prominent "caution" or other appropriate warning sign of highly visible color warning of hazardous voltage and including the name of the utility. The IAEC recommended the word "caution" be changed to the word "warning" to be consistent with other pertinent regulations.

Since this rule was adopted, the National Electrical Safety Code (NESC) has added a recommendation that warning signs comply with ANSI Z535 standards. ANSI Z535.2, "Environmental and Facility Safety Signs," states that "Caution" is an appropriate word for potentially hazardous situations which, if not avoided, could result in minor to moderate injury. "Danger" or "Warning" are to be used where death or serious injury could occur. Under these criteria the word "Caution" does not appear strong enough for utility electrical facilities.

Staff agrees the word "Caution" should be replaced by "Warning" as recommended by IAEC. However, requiring that all signs currently in place be replaced would pose a significant burden upon the utilities. The NESC does not make this sign change retroactive, and staff believes neither should the Board. (Although staff has heard reports that some utilities' insurance companies are urging replacement of all signs.) It is proposed the rule specify that this language would apply to only signs installed after the effective date of the rule.

Staff recommends the Board amend 199 IAC 25.2(2) and (3) as follows:

ITEM 16. Amend subrules 199—25.2(2) and (3) as follows:

25.2(2) *Modifications and qualifications to ANSI C2.* The standards set forth in ANSI C2 are modified or qualified as follows:

a. Introduction to the National Electrical Safety Code.

(1) The following paragraph ~~is added to NESC 011~~ replaces NESC 011B: "The National Electrical Safety Code (NESC) covers utility facilities and functions from the point of generation

by the utility, or delivery from another entity, of electricity or communications signals through the utility system to the point of delivery to a customer's facilities."

(2) NESC 013A2 is modified to read as follows: "Types of construction and methods of installation other than those specified in the rules may be used experimentally to obtain information, if done ~~where qualified supervision is provided and prior approval is obtained from the board, where:~~

- a. Qualified supervision is provided.
- b. Equivalent safety is provided.
- c. On joint use facilities, all affected parties agree, and
- d. Prior approval is obtained from the Iowa utilities board "

b. Minimum clearances.

(1) In any instance where minimum clearances are provided in Iowa Code chapter 478 which are greater than otherwise required by these rules, the statutory clearances shall prevail.

(2) The following clearances shall apply to all lines regardless of date of construction: NESC 232, vertical clearances for "Water areas not suitable for sailboating or where sailboating is prohibited," "Water areas suitable for sailboating. . .," and ~~"Public or private land and water areas posted for rigging and launching sailboats~~ Established boat ramps and associated rigging areas. . ."; and NESC 234E, "Clearance of Wires, Conductors, ~~or~~ Cables or Unguarded Rigid Live Parts Installed Over or Near Swimming Areas With No Wind Displacement."

(3) Table 232-1, Footnote ~~49~~ 21, is changed to read: "Where the U.S. Army Corps of Engineers or the state, or a surrogate thereof, issues a crossing permit, the clearances of that permit shall govern if equal to or greater than those required herein. Where the permit clearances are less than those required herein and water surface use restrictions on vessel heights are enforced, the permit clearances may be used."

(4) Except for clearances near grain bins, for measurements made under field conditions, the board will consider compliance with the overhead vertical line clearance requirements of Subsection 232 and Table 232-1 of the 1987 NESC indicative of compliance with the ~~1997~~ 1990 through 2002 editions of the NESC. (For an explanation of the differences between 1987 and subsequent code edition clearances, see Appendix A of the ~~1997~~ 1990 through 2002 editions of the NESC.)

(5) c. *Rescinded IAB 8/5/92, effective 9/9/92.*

d. Rule 264E.1 is changed to read:

"The ground end of anchor guys exposed to pedestrian or vehicle traffic shall be provided with a substantial marker not less than eight feet long. The guy marker shall be of a conspicuous color such as yellow, orange, or red. Green, white, gray or galvanized steel colors are not reliably conspicuous against plant growth, snow, or other surroundings. Noncomplying guy markers shall be replaced as part of the utility's inspection and maintenance plan."

e. There is added to Rule 381G:

(3) Pad-mounted and other above-ground equipment not located within a fenced or otherwise protected area shall have affixed to its outside access door or cover a prominent "Warning Caution" or other appropriate ~~warning~~ sign of highly visible color, warning of hazardous voltage and including the name of the utility. ~~These signs shall be in place on or before December 31, 1992.~~ This rule shall apply to all signs placed or replaced after (insert effective date of revised rule).

f. There is added to the first paragraph of Rule 110.A.1, after the sentence stating, "Entrances not under observation of an authorized attendant shall be kept locked," the following sentence:

Entrances may be unlocked while authorized personnel are inside. However, if unlocked, the entrance gate must be fully closed, and must also be latched or fastened if there is a gate-latching mechanism.

25.2(3) Grain bins.

a. Utilities shall conduct annual public information campaigns to inform farmers, farm lenders, grain bin merchants, and city and county zoning officials of the hazards of and standards for construction of grain bins near power lines.

b. An electric utility may refuse to provide electric service to any grain bin built near an existing electric line which does not provide the clearances required by The American National Standards Institute (ANSI)C2-~~1997~~ 2002"National Electrical Safety Code," Rule 234F. This paragraph "b"

shall apply only to grain bins loaded by portable augers, conveyors or elevators and built after September 9, 1992, or to grain bins loaded by permanently installed augers, conveyors, or elevator systems installed after December 24, 1997.

BOARD COMMENTS:

AMEND RULES 199--25.2(3)"a" and 25.5

199 IAC Chapter 25, the Iowa Electrical Safety Code, applies to both electric and communications utilities. Within that chapter, however, it is common to find language limiting the application of certain rules to only one type of utility. Paragraph 25.2(3)"a" applies to construction of grain bins near power lines, and rule 25.5 to reporting of electric contact accidents. Although implicit, it is not specifically stated that these rules apply only to electric utilities. In Docket No. INU-00-1, the Iowa Telecommunications Association suggested clarifying that these rules apply only to electric utilities and not to communications utilities.

Staff find merit in this suggestion and recommends amending 199 IAC 25.2(3)"a" and 25.5 as follows:

ITEM 17. Amend paragraph 199—25.2(3)"a" as follows:

a. Electric uUtilities shall conduct annual public information campaigns to inform farmers, farm lenders, grain bin merchants, and city and county zoning officials of the hazards of and standards for construction of grain bins near power lines.

ITEM 18. Amend the first sentence of rule 199—25.5 as follows:

199—25.5(476,478) Accident reports. An electric utility shall file with the board a written report on any accident to an employee or other person involving contact with its energized electrical supply facilities which results in a fatality, admission to a hospital, \$10,000 in damages to the property of the utility and others, or any other accident considered significant by the utility.

BOARD COMMENTS:

RESCIND RULE 199—25.2(4) AND REPLACE IT WITH THE CONTENTS OF
RULE 199—11.6(2)

Rule 199 IAC 25.2(4) contains extensive provisions that appear primarily intended to prevent interference between electric lines and telephone facilities and signals. However, design and clearance standards to prevent physical interference are contained in the National Electrical Safety Code (NESC), adopted by the Board in Rule 25.2(1) and applicable to both electric and communications lines. Problems with electrical and inductive interference appear to have been resolved with technology advances. The sole remaining issue was whether these Board rules were needed to prevent right-of-way conflicts and/or congestion. Comments were solicited in Docket No. INU-00-1 on whether this rule should be retained.

No commenter opposed its deletion. However, the Iowa Telecommunications Association (ITA) asked if the last two sentences of paragraph 25.2(4)"b" remain applicable. These sentences state:

In the absence of a joint occupancy agreement, communication lines shall be constructed on one side of the highway so that the other side of the highway may be used for electric supply lines.

Crossings from side to side of a highway should be avoided as far as practical.

It is unclear to staff if these provisions retain any relevance – that was why comments were solicited in the INU. Nor did the ITA comments indicate if they supported or opposed their deletion. Staff recommends deletion be proposed and further consideration be based on the comments filed.

In Docket No. INU-00-1, staff noted that subrule 11.6(2) is applicable to electric lines that do not require a franchise, includes communications line issues, and generally has no relationship to the electric franchise proceedings which are the purpose of 199 IAC Chapter 11. It appeared the rule would be more appropriately placed in 199 IAC Chapter 25, the Iowa Electrical Safety Code, which applies to communications lines and all electric lines. Rule 25.2(4) appears a logical place to relocate the rule from Chapter 11.

In Docket No. INU-00-1 staff also proposed relocation current rule 11.6(3) to Chapter 25. The rule addresses the costs of relocating an existing electric or communications line to make way for a new electric line. Upon further reflection, however, this is not a safety-related rule and it addresses a situation most likely to arise in an electric franchise proceeding. Staff no longer proposed relocating that rule. Staff had also proposed retaining the title of Rule 24.2(4) but now believes the title of Rule 11.6(2) would be more appropriate.

Staff recommends that the Board delete and reserve subrule 11.6(2), delete existing subrule 25.2(4), and replace it with the content of current subrule 11.6(2) as follows:

ITEM 19. Rescind and reserve subrule 11.6(2)).

ITEM 20. Rescind existing subrule 199 IAC 25.2(4) and replace with the following:

25.2(4) *Joint use construction.* Where it is mutually agreeable between the electric supply company and the communication or cable television company, communication circuits or cables may be buried in the same trench or attached to the same supporting structure, provided this joint use is permitted by, and is constructed in compliance with, the Iowa electrical safety code.

BOARD COMMENTS:

II. Recommendation

It is recommended the Board instruct General Counsel to draft an order initiating a rulemaking proposing adoption of the rules and amendments proposed in this memorandum.

RECOMMENDATION APPROVED

IOWA UTILITIES BOARD

/DJS

/s/ Diane Munns 10/25/02
Date

/s/ Mark O. Lambert 10/25/02
Date

/s/ Elliott Smith 10/25/02
Date

cc: Standard Distribution